

Applicants note that the only remaining rejection in the above-identified application is a provisional nonstatutory obviousness-type double patenting rejection of claims 1, 3, 4, 13, 14, and 42 as being unpatentable over claims 1, 3, 4, 13-19, 36-41, 44, and 47-58 of copending U.S. Patent Application No. 12/035,917. Pursuant to Manual of Patent Examining Procedure § 804(I)(B)(1), “[i]f a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.” Since copending U.S. Patent Application No. 12/035,917 was filed on February 22, 2008, which is after the present application, and is currently rejected on other grounds, the present application should be allowed to issue without a terminal disclaimer, in accordance with MPEP §804(I)(B)(1). Accordingly, the provisional rejection based on nonstatutory obviousness-type double patenting is improper and should be withdrawn.

Applicants respectfully request consideration of the Information Disclosure Statement filed on June 22, 2010.

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited. In addition, applicants request rejoinder and allowance of the withdrawn process claims.

The Commissioner is hereby authorized to charge any required fees or credit any overpayment to Deposit Account No. 14-1138.

Respectfully submitted,

Date: July 1, 2010

/Georgia Evans/
Georgia Evans
Registration No. 44,597

NIXON PEABODY LLP
1100 Clinton Square
Rochester, New York 14604
Telephone: (585) 263-1000
Facsimile: (585) 263-1600